

## SENATE BILL No. 620

### DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 13-14-8-9; IC 13-18-3.

**Synopsis:** Combined sewer overflows. Amends the permissible terms of certain variances from water quality standards and of variance renewals. Establishes a CSO wet weather use designation for waters affected by receiving combined sewer overflows. Requires the department of environmental management, upon request of an NPDES permittee, to establish a schedule of compliance to meet water quality based requirements during development, approval, and implementation of a long term control plan.

**Effective:** July 1, 2005.

**Gard**

January 24, 2005, read first time and referred to Committee on Energy and Environmental Affairs.

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Introduced

First Regular Session 114th General Assembly (2005)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2004 Regular Session of the General Assembly.

## SENATE BILL No. 620

A BILL FOR AN ACT to amend the Indiana Code concerning environmental law.

*Be it enacted by the General Assembly of the State of Indiana:*

1       SECTION 1. IC 13-14-8-9 IS AMENDED TO READ AS  
2       FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 9. (a) A variance from  
3       a water quality standard that is at least in part the basis of a National  
4       Pollutant Discharge Elimination System permit issued under this title:

5               (1) must meet the conditions specified in:

6                   (1) ~~(A)~~ 40 CFR Part 132, Appendix F, Procedure 2.C; and

7                   (2) ~~(B)~~ rules adopted by the board; and

8               (1) ~~Except as provided in subsection (c), a variance from a water~~  
9       quality standard of the water pollution control board under section 8 of  
10       this chapter or IC 13-7-7-6 (before its repeal) may be:

11               (1) granted for not more than five (5) years; and

12               (2) renewed for not more than five (5) years.

13               (2) may be renewed for an unlimited number of permit terms.

14       (1) ~~(b)~~ A variance granted under section 8 of this chapter or  
15       IC 13-7-7-6 (before its repeal) from a water quality standard that is at  
16       least in part the basis of a National Pollutant Discharge Elimination  
17       System permit

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- (1) issued under this title; and
- (2) extended under IC 13-15-3-6 or IC 13-7-10-2(c) (before its repeal);

remains in effect ~~until~~ **for as long as** the National Pollutant Discharge Elimination System permit ~~expires~~ **is in effect**.

SECTION 2. IC 13-18-3-2.3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 2.3. (a) ~~A long term control plan, upon implementation, fulfills the water quality goals of the state with respect to wet weather discharges that are a result of overflows from the combined sewer system addressed by the plan if:~~

- (1) the plan provides for the implementation of cost effective control alternatives that will attain water quality standards or maximize the extent to which water quality standards will be attained if they are not otherwise attainable;
- (2) the plan provides, at a minimum, for the capture for treatment of first flush;
- (3) the plan is reviewed periodically; and
- (4) additional controls are implemented as provided in section 2.4 of this chapter.

Cost effectiveness may be determined, at the option of the permit holder, by using a knee of the curve analysis.

~~(b) (a) When~~ **If** a use attainability analysis is required for a suspension of designated uses under this chapter, the department must, to the maximum extent permitted under state or federal law, **performed to change the designated use of a water body receiving wet weather discharges from combined sewer overflows from full body contact recreation under 327 IAC 2-1-6 (as in effect on January 1, 2005) to the CSO wet weather subcategory established in section 2.5 of this chapter, upon implementation of the approved long term control plan, the plan fulfills the water quality goals of the state with respect to wet weather discharges that are a result of overflows from the combined sewer system addressed by the plan.**

**(b) A long term control plan must meet the requirements of:**

- (1) the Consolidated Appropriations Act (P.L. 106-554); and**
- (2) 59 FR 18688.**

**(c) If a use attainability analysis is performed, the department shall:**

- (1) review a use attainability analysis submitted under this chapter concurrently with a long term control plan submitted under this chapter; and
- (2) use the approved long term control plan to satisfy the requirements of the use attainability analysis.

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SECTION 3. IC 13-18-3-2.4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 2.4. ~~★ An NPDES~~ permit holder shall review the feasibility of implementing additional or new control alternatives to attain water quality standards. ~~including standards suspended under section 2.5 of this chapter.~~ The NPDES permit holder shall conduct such a review periodically, but not less than every five (5) years after approval of the long term control plan by the department. The NPDES permit holder shall:

- (1) document to the department that the long term control plan has been reviewed;
- (2) update the long term control plan as necessary;
- (3) submit any amendments to the long term control plan to the department for approval; and
- (4) implement control alternatives determined to be cost effective.

Cost effectiveness may be determined, at the option of the NPDES permit holder, by using a knee of the curve analysis **in accordance with the Consolidated Appropriations Act (P.L. 106-554) and 59 FR 18688.**

SECTION 4. IC 13-18-3-2.5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 2.5. (a) ~~Subject to the limitations of subsection (d);~~ designated uses and associated water quality criteria are temporarily suspended on a site specific basis; **A CSO wet weather use subcategory is established** for waters affected by discharges from receiving combined sewer overflow points listed in the National Pollutant Discharge Elimination System (NPDES) permit ~~due to overflows. The CSO wet weather events; if use subcategory applies after full implementation of an approved long term control plan. The following requirements apply to the CSO wet weather use subcategory:~~

- (1) the department has approved a long term control plan for the NPDES permit holder for the combined sewer system;
- (2) the approved long term control plan is incorporated into the permit holder's NPDES permit;
- (3) the approved long term control plan:
  - (A) satisfies the requirements of section 2.3 of this chapter; and
  - (B) specifies the designated uses and water quality standards to be suspended under this section;
- (4) the permit holder:
  - (A) has implemented the approved long term control plan; or
  - (B) is implementing the approved long term control plan in accordance with the schedule approved in the long term

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- 1 control plan;
- 2 (5) the permit holder is in compliance with the requirements for
- 3 the operation and maintenance of its wastewater treatment
- 4 facilities and combined sewer system, including its combined
- 5 sewer operational plan approved by the department; and
- 6 (6) the provisions of 40 CFR 131.10; 40 CFR 131.20; and 40 CFR
- 7 131.21 are satisfied;

8 The provisions of 40 CFR 131.10 may be satisfied by including

9 appropriate data and information in the long term control plan:

- 10 (b) Existing uses as defined in 40 CFR 131.3(e) and associated
- 11 water quality criteria may be suspended only in accordance with federal
- 12 law:

- 13 (c) To the extent permitted under federal law, the department shall
- 14 provide a compliance schedule for attainment of water quality based
- 15 limitations for discharges from combined sewer overflow points in the
- 16 NPDES permit during the period when the long term control plan is
- 17 being developed:

- 18 (d) A temporary suspension applies only:
- 19 (1) to the NPDES permit holder for discharges from the permit
- 20 holder's listed combined sewer overflow points; and
- 21 (2) (1) The water conditions that apply to combined sewer
- 22 overflows that result from wet weather events consistent with
- 23 an approved long term control plan are determined in
- 24 accordance with the long term control plan. That
- 25 determination remains in effect during the time and to the
- 26 physical extent that the designated uses and water quality
- 27 standards are not attained due to the discharges from the listed
- 28 combined sewer overflow points, full body contact recreation
- 29 use designation under 327 IAC 2-1-6 (as in effect on January
- 30 1, 2005) is not attained, but not for not more than four (4) days
- 31 after the date the overflow discharge ends.

- 32 (e) The board may adopt rules in accordance with IC 13-14-8 and
- 33 IC 13-14-9 to amend the water quality standards to include the terms
- 34 of the temporary suspension allowed by this section:

- 35 (2) At all times other than those described in subdivision (1),
- 36 the water quality criteria associated with the appropriate
- 37 recreation use designation under 327 IAC 2-1-6 (as in effect
- 38 on January 1, 2005) apply unless there is a change in the use
- 39 designation as a result of a use attainability analysis.
- 40 (b) The CSO wet weather use subcategory applies if:
- 41 (1) the department has approved a long term control plan for
- 42 the NPDES permit holder for the combined sewer system;

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(2) the approved long term control plan:

(A) is incorporated into:

(i) the NPDES permit holder's NPDES permit; or

(ii) an order under IC 13-14-2-6;

(B) satisfies the requirements of section 2.3 of this chapter; and

(C) specifies the water conditions that apply to combined sewer overflows during and immediately following wet weather events, as provided in subsection (a)(1);

(3) the NPDES permit holder has implemented or is implementing the approved long term control plan; and

(4) subject to subsection (c), 40 CFR 131.10, 40 CFR 131.20, and 40 CFR 131.21 are satisfied.

(c) For purposes of subsection (b)(4), 40 CFR 131.10 may be satisfied by including appropriate data and information in the long term control plan.

(d) The department shall implement the CSO wet weather use subcategory and associated water quality based requirements under this section when the subcategory and requirements are approved by the United States Environmental Protection Agency.

~~(f)~~ (e) The NPDES permit holder shall monitor its discharges and the water quality in the affected receiving stream periodically ~~but at least every three (3) years as provided in the long term control plan.~~ The NPDES permit holder shall provide all such information to the department.

~~(g)~~ (f) In conjunction with a review of its long term control plan under section 2.4 of this chapter, the NPDES permit holder shall review information generated after the use attainability analysis was approved by the department to determine whether the conclusion of the use attainability analysis is still valid. The NPDES permit holder shall provide the results of the review to the department.

~~(h)~~ A temporary suspension under this section may be authorized only to the extent allowed under federal law. If the department determines that information provided under this section demonstrates that uses being suspended are attainable, the department shall promptly notify the permit holder of its determination. A permit holder may appeal the department's determination under this section in accordance with IC 4-21.5.

(i) After the effective date of the determination under subsection (h), the long term control plan may be modified to achieve attainment of the previously suspended uses and associated water quality criteria. The compliance schedule and other provisions of the NPDES permit shall

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also be modified as necessary.

(g) The board shall adopt rules under IC 13-14-8 and IC 13-14-9 to implement this section.

SECTION 5. IC 13-18-3-2.6 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 2.6. (a) The department shall, at the request of the NPDES permit holder, incorporate in the permit a schedule of compliance for meeting the water quality based requirements associated with combined sewer overflows during the period of development, approval, and implementation of the long term control plan. The schedules of compliance:

- (1) may exceed time frames authorized under 327 IAC; and
- (2) may not exceed the period specified for implementation in an approved long term control plan.

(b) If the term of a schedule of compliance exceeds the term of an NPDES permit, the department shall continue to implement the schedule of compliance continuously before and during each successive permit term, to the maximum duration as provided in subsection (a). The permit shall specify that the schedule of compliance lasts beyond the term of the permit.

(c) Upon request of the permittee, the department shall modify NPDES permits containing water quality based requirements associated with combined sewer overflows to provide schedules of compliance as provided in subsection (a).

(d) The board shall adopt rules under IC 13-14-8 and IC 13-14-9 to implement this section.

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